APPENDIX A.

Opinion of the Court of Appeal.

[Civ. No. 31826. Second Dist., Div. Two. Dec. 4, 1968.]

John S. Griffith et al., Plaintiffs and Respondents, v. County of Los Angeles et al., Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County. Martin Katz, Judge. Reversed.

Action to recover real estate taxes paid under protest. Judgment for plaintiffs reversed.

Smithers, Good & Potter, Clyde H. Potter, Jr., Baker, Ancel & Redmond and Mark G. Ancel for Plaintiffs and Respondents.

John D. Maharg, County Counsel, and A. R. Early, Assistant County Counsel, for Defendants and Appellants.

NUTTER, J. pro tem.*—This action was brought by seven owners of shopping centers in Los Angeles County to recover real estate taxes paid under protest. The cases involve questions concerning the methods of proving discrimination or unfair assessments of taxpayer's real property with particular problems directed to methods of proof of the ratio prevailing within the county of assessed valuation to market valuation for the tax year in question. It was the contention of respondents that the 1962-1963 tax assessment of their real property was excessive and that when they presented their protests to the Los Angeles County Board of Su-

*Assigned by the Chairman of the Judicial Council.

pervisors sitting as a board of equalization they did not receive a fair hearing and the board committed error in certain of its evidentiary rulings concerning the ratio determinations of the State Board of Equalization. The trial court agreed with respondents and made findings to the effect that the board denied respondents due process by excluding evidence of the ratio studies made by the State Board of Equalization for the tax years of 1960-1961, 1961-1962. The trial court remanded the matter to the board for a new hearing for determination of the issues raised by respondents' petition.

The hearing before the county board took place in July 1962. The matter came to trial before the superior court in July 1966. The court sitting without a jury received evidence of the proceedings before the board and other rejected evidence.

The court found: (1) That the respondents introduced substantial evidence of market value of the property for the tax year 1962-1963 and they attempted to introduce substantial evidence of the ratio prevailing generally of assessed to fair market value of locally assessable tangible property as of the lien date but that the Board of Equalization of the County of Los Angeles refused to admit such evidence. (2) That the evidence which the respondents sought to introduce consisted of certain ratio studies made by the California State Board of Equalization for the tax years 1960-1961 and 1961-1962 which showed ratios respectively of 23.3 percent and 24.4 percent for Los Angeles County and a statewide weighted average of 22.6 percent and 23.5 percent for each of such years. (3) That the assessor had testified that he was assessing at the same ratio in 1962 as he had in 1960 and in 1961 and that he had further testi-

fied that he had not objected to the state board determinations of ratio for those years and did not intend to object to its ratio determination for 1962.

The trial court further found that the board of equalization refused to take official notice of the determinations of ratio published by the state board for the tax years 1960-1961 and 1961-1962 on the grounds of *irrelevancy* and that had the board taken official notice of such ratios it *could have found* that the prevailing ratio in Los Angeles County in each of such years was 23.3 percent and 24.4 percent and that the statewide weighted average in each of such years was 22.6 percent and 23.5 percent and that substantially identical ratios prevailed in Los Angeles County for the tax year 1962-1963; that the refusal of the board of equalization to admit into evidence the state board determinations and the refusal to take official notice of such determinations precluded the respondents from introducing into evidence at the hearing before the County Board of Equalization substantial material evidence of the prevailing ratio for the tax year in question, which evidence, when applied to the market values of the property of the respondents would have tended to disclose substantial over-assessments and resultant discrimination. The trial court further concluded that by virtue of these findings, additional findings would be surplusage and made no other findings as to the other issues raised; that the action of the county board was void.

The scope of judicial review in cases such as this is explained in *Bank of America v. Mundo,* 37 Cal.2d 1, at page 5 [229 P.2d 345]: "The duty of determining the value of the property and the fairness of the assessment is confided to the appropriate county board of

equalization. Furthermore, in discharging this duty, the board's determination upon the merits of the controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to *resolve conflicting issues of fact as to the taxable value of his property.* (*Universal Consol. Oil v. Bryam,* 25 Cal.2d 353 [153 P.2d 746]; *Eastern-Columbia, Inc. v. County of Los Angeles,* 70 Cal.App.2d 497, 500 [161 P.2d 407].) The question presented to the superior court in such an action is *whether there was evidence of sufficient substantiality before the board to justify the finding* (*Kaiser Co. v. Reid,* 30 Cal.2d 610, 626 [184 P.2d 879]), and in the absence of fraud or malicious or arbitrary use of its powers the *board is the sole judge of questions of fact and of the values of property.* (*Los Angeles Gas & Elec. Co. v. County of Los Angeles,* 162 Cal. 164, 170 [121 P. 384].)" (italics added.)

"[T]he board's determination upon the merits of a controversy is conclusive; the taxpayer has no right to a trial de novo in the superior court to resolve conflicting issues of fact. . . ." (*Best v. County of Los Angeles,* 228 Cal.App.2d 655, 657 [39 Cal.Rptr. 665].) The taxpayer has the burden of showing the board that the assessor's figures are improper and the assessments are not fair and equitable. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478 [284 P. 1072]; *Wild Goose County Club v. County of Butte,* 60 Cal. App. 339, 342 [212 P. 711]. See *Utah Const. Co. v. Richardson,* 187 Cal. 649, 654 [203 P. 401].)

" 'It is a rule applicable to assessors and to boards having assessing powers that it is presumed that the assessing officers have properly performed the duties entrusted to them and, consequently, that their assessments are both regularly and correctly made.' " (*Best v. County of Los Angeles, supra,* at p. 657.)

The cases were tried on the theory that assessments on the taxpayer's property to its value exceeded that generally prevailing in the county. For the taxpayers to substantiate this theory it would be necessary for them to submit evidence that there was a disparity of the ratio between that applied to appellants' property and that applied to other property generally prevailing in the county. To prove these contentions, the taxpayers must, of course, show the ratio prevailing generally and the ratio in his case. To sustain his burden the taxpayer must at least make a prima facie showing in this regard. That is, he must introduce some evidence of the assessment inequality before there is any burden on the assessor. Without this prima facie showing the assessor is not obliged to go forward with any evidence. He may stand on his presumption that the assessment is fair and equitable.

Accordingly, this court must determine if, as determined by the trial court, the evidentiary rulings of the board prejudiced the respondent-taxpayers in proving the assessment ratio prevailing generally for the tax year in question by excluding substantial evidence of the ratio or refusing to take judicial notice of the

state board ratio studies for prior tax years. If so, there would be a violation of due process. (*Leach Corp. v. County of Los Angeles,* 228 Cal.App.2d 634, at p. 642 [39 Cal.Rptr. 654].)

EVIDENCE OF RATIO

For the most part, respondents' efforts were directed toward an attempt to show that the assessor had used improper methods; that the county ratio of assessment was different from that determined by the State Board of Equalization.[1]

Proof of the difference between the state determined ratio, if it was a fact and that utilized by the county, would not in itself prove a discriminatory assessment practice against taxpayers.

Assessments are required to be equalized in the county as a whole, and discrepancies as between particular properties do not necessarily establish that plaintiffs' assessments were unfair as compared to the county as a whole. (*Wild Goose Country Club v. County of Butte,* 60 Cal.App. 339 [212 P. 711]. See *A. F. Gilmore Co. v. County of Los Angeles,* 186 Cal.App.2d 471, 476 [9 Cal.Rptr. 67]; *Alpaugh Irr. Dist. v. County of Kern,* 113 Cal.App.2d 286, 294 [248 P.2d 117]; *Birch v. County of Orange,* 88 Cal.App. 82, 85 [262 P. 788].)

It assessments were equalized for the county as a whole, it would make no difference whether there was a discrepancy between the county ratio or the state determined ratio.

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[1]Some of the problems giving rise to this litigation were remedied at least in part by the 1966-1967 amendments to the Revenue and Taxation Code. (See *Aftermath of Scandal,* 41 State Bar Journal 662 (1966), Klan and Platt.

A key issue in this case is the effect of a stipulation regarding County Assessor Quinn's testimony concerning the county ratio of assessed valuation to market valuation. If this stipulation were binding on respondents as to the fact of the existing county ratio for the tax year in question, then the question of whether the board excluded evidence of the state board's determination of the ratio would be moot.

Mr. Early, Deputy County Counsel, was asked by counsel for the respondent-taxpayers, Mr. Ancel, if he would stipulate that the ratio of assessed to fair market value prevailing generally in the county as of the lien date for 1962 was 50 per cent. Mr. Early stated, "With the added qualification that it is 50% of Mr. Quinn's, the Assessor's opinion of the fair market value of all property, yes I so stipulate." Mr. Ancel asked if that was according to Mr. Quinn's testimony. Thereupon, Mr. Early stated "That is based entirely on Mr. Quinn's testimony, yes."

The superior court found that Mr. Quinn's testimony was evasive and equivocal, that the stipulation was *not* a stipulation as to the actual ratio of assessed value to market value in the County of Los Angeles for 1962, but was merely a stipulation as to the meaning of the assessor's testimony.

It is unnecessary for us to determine if this was a stipulation binding respondents as to the generally prevailing assessment ratio. It is suffice to say that the board could consider Mr. Quinn's testimony as substantial evidence of the generally prevailing ratio for the tax year in question. It is not our function to weigh conflicting substantial evidence nor should the superior court when it is reviewing administrative board

decisions. (*Strei v. State Personnel Board,* 210 Cal. App.2d 643, 648 [26 Cal.Rptr. 875].) Accepting the stipulation as substantial evidence of the ratio for 1962, were respondents prejudiced by the exclusion or rejection of evidence of the state's determination or ratio for prior tax years?

Issues concerning Los Angeles County Board's admission or exclusion of evidence of the State Board of Equalization assessment ratios for prior tax years were explored and determined in the cases of *Leach Corp. v. County of Los Angeles, supra,* and *Web Service Co. v. County of Los Angeles,* 242 Cal.App.2d 1 [51 Cal. Rptr. 753]. We must determine if the board rulings in this case prejudiced plaintiffs or if there is sufficient cause to vary the rules in *Leach* and *Web Service, supra,* that evidence of ratios in prior years is irrelevant.

The taxpayers requested that the board take judicial notice of the assessment ratios for the prior years of 1960-1961, 1961-1962 as determined by the state board of equalization.

The superior court found that the board committed prejudicial error when it refused to take judicial notice of these ratios. In explaining its tentative opinion the trial court stated from the bench that there is 'a distinction between the situation in this case and those in *Web Service Co. v. County of Los Angeles, supra,* in "the fact that there was testimony here by the Assessor in effect that he was assessing at the same ratio in 1962 that he had assessed in 1960 and 1961."

At the hearing before the board respondents made a motion that the board require the assessor to produce the preliminary, tentative and unpublished tabulations

of that ratio as made by the state board. In ruling on this motion, the trial judge stated he was following the *Leach* and *Web Service* rule, and the board properly excluded the *tentative* tabulations for the tax year in question. Accordingly, the question on this appeal is narrowed to a review of the trial judge's finding that the board's refusal to take official notice of the state's 1960 and 1961 ratio determinations prevented respondents from introducing substantial material evidence of the 1962 ratio; that the evidence of the prior tax years' ratio would have tended to disclose substantial overassessment and discrimination.[2]

Assessor Quinn testified that he was assessing at the same ratio in 1962 that he used in the tax years for 1960 and 1961. Even assuming from this testimony that the board could have found substantially identical ratios for 1962 and 1961 and 1960, under the previous

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[2]Revenue and Taxation Code, section 1818: "The board shall each year prepare tabulations showing for each county the ratio of assessed to full cash value of locally assessable tangible property. The tabulations shall show, in such a way as to prevent identification of individual parcels, the ratio of assessed to full cash value of each parcel of such tangible property in the sample of any survey in the county made in the last year pursuant to Section 1815. The tabulations shall also show the derivation of the total full cash value of the locally assessable tangible property on the current roll from the total full cash value of the locally assessable tangible property on the roll of a prior year pursuant to Section 1817. All such tabulations shall be open for inspection by all persons interested."

Revenue and Taxation Code, section 1819 (as it read in 1960): "As soon as tabulations have been made pursuant to Section 1818, but not later than August 1st, the board shall give the assessor of each county a reasonable opportunity to examine and discuss with it that portion of the tabulations affecting property in his county. After making any adjustment it deems appropriate as the result of such discussion, but not later than September 2d, the board shall make available for public inspection all such tabulations and shall publish the ratio of assessed to full cash value of locally assessable tangible property for each county."

rulings of the court in *Leach* and *Web Service, supra,* it is impossible to determine how and in what manner appellants may have been prejudiced, nor how this would have tended to disclose over-assessment and discrimination. We cannot conclude that the exclusion of ratio evidence of prior years prevented appellants from offering to the board any substantial material evidence of the 1962 ratio particularly in view of the stipulation of the parties concerning Assessor Quinn's testimony.

We do not believe there is sufficient difference in the facts of this case or in matters developed on cross-examination of Mr. Quinn with particular regard to his use of the same ratio in 1960 and 1961 to modify the ruling in *Leach* and *Web Service, supra.*

In the *Web Service* case, the taxpayer who was seeking a reduction in his 1961 assessment also requested the county board to take judicial notice of the 1960 county wide assessment ratio as determined by the State Board of Equalization. The action of the Board in refusing to take such judicial notice was upheld by the court. (*Web Service Co. v. County of Los Angeles, supra,* at p. 11.)

Respondents argue that the assessor's testimony that he was assessing at the "same ratio" (i.e. 50 percent of his opinion of fair market value) for the tax year and prior years should compel a modification of the *Leach* and *Web Service* rules. The reason for the rules in these cases still applies to the case at bench. No worthwhile purpose is served by opening up questions concerning prior tax years. New issues and complications are introduced which are irrelevant to the issue in dispute, i.e. the current tax year. Finally, proving that

there was a wide discrepancy between the county assessor's opinion of market value or full cash value and the state board's opinion of a prior year does not prove that plaintiffs' property had been assessed on any different basis from property generally throughout the county. The state board's ratio of prior years would not have materially aided plaintiffs in this hearing, and the assessor's refusal to disclose it was not prejudicial. (*Leach Corp. v. County of Los Angeles, supra,* at pp. 641-642; *Web Service Co. v. County of Los Angeles, supra,* at p. 11.)

Respondents argue that there was evidence of the relationship between the total county assessment in 1961 and in 1962, but this is helpful only if one also knows the total fair market value of taxable property in the county in 1962. Respondents tendered no evidence on this point, or any evidence of disparity of treatment or of the ratio of their property and other property in the county. Thus, any error of the board excluding the evidence even on an impeachment theory could hardly have been prejudicial. On this record a court could not say that the board exceeded its powers when it concluded that appellants failed to sustain their burden of proving they suffered unlawful discrimination. (*Best v. County of Los Angeles, supra.*)

EVIDENCE OF MARKET VALUE

The only testimony of the market value of the shopping centers presented to the board by respondents was the affidavit of one Clem Glass and the enclosures thereto. The exhibits attached to his affidavit show that Mr. Glass used a capitalization of income study to determine the "net value" of the shopping center.

The testimony before the board was that the market value of Alhambra Shopping Center amounted to $1,480,000; the market value of Atlantic Square amounted to $2,600,000; Lakewood Triangle $800,000; Pomona Valley Center $1,730,670; Reseda Plaza $775,990; exclusive of the Food Giant Market; Thriftimart $350,000; Whittier Downs $1,422,768.

Although Mr. Glass stated in his affidavit that he had "appraised the value of the entire fee interest" in each shopping center, he admitted on cross-examination that his valuation opinion would have been different if the tenants had been different; he admitted that his opinion of the fair market value of these properties would not be the same if the rents were substantially lower, for instance one dollar a year; he admitted that a combination of the lessor's interest and the lessee's interest in each shopping center would equal "the actual fair market value of the property"; he admitted that it was "reasonably fair" to say that his appraisals were of the type he would make for a lending institution that intended to loan money to the lessor of a shopping center, and that his opinion of value depended entirely on the terms of the existing leases and the credit standing of the tenants.

Assessor Quinn testified without contradiction that he had assessed the complete estate in each property.

The board could have rejected the Glass testimony.

Opinions of value and other expert opinions, *even though uncontradicted,* are worth no more than the reasons and factual data upon which they are based.

"An expert's opinion is no better than the reasons given for it. ' "If his opinion is not based upon facts

otherwise proved . . . it cannot rise to the dignity of substantial evidence.'" (*San Diego Gas & Elec. Co. v. Sinclair* (1963) 214 Cal.App.2d 778, at p. 783 [29 Cal.Rptr. 769].)

To the same effect is *Hemmerling v. Tomley, Inc.* (1967) 67 Cal.2d 572 at p. 577 [63 Cal.Rptr. 1, 432 P.2d 697], where Chief Justice Traynor states that "We cannot agree, however, with the Hemmerlings' contention that the trial court was bound to accept their uncontradicted valuation testimony." A tax case in which the same result was reached is *Bordenave v. Franchise Tax Board* (1958) 158 Cal.App.2d 291 [322 P.2d 260].[3]

We have determined that appellants have not sustained their burden. The record as a whole supports a finding by the board that the assessments were not unfair or inequitable.

In 1966 the rule was that "If the presumption affects the burden of proof, the court is still required to affirm a verdict or finding in favor of the party relying on the presumption unless it is possible for the court to find that the adverse party overcame the presumption as a matter of law." (California Evidence Code Manual, C.E.B. (1966), § 2.35, p. 434.)

"Whether a party has discharged the burden of proof is a question for the trier of fact to decide. If the party with the burden of proof fails to establish in the

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[3]See also *People v. Bassett*, [a]69 Cal.2d ....., at p. ..... [70 Cal.Rptr. 193, 443 P.2d 777], where the court discussed expert testimony which may not be deemed substantial evidence, citing *Estate of Powers*, 81 Cal.App.2d 480 [184 P.2d 319], and *Estate of Teed*, 112 Cal.App.2d 638 [247 P.2d 54], where the sole testimony of experts was rejected as not being substantial evidence.

[a]Advance Report Citation: 69 A.C. 121, at p. 145.

mind of the trier of fact the requisite degree of belief concerning the fact in issue, the trier of fact is required to rule against him regarding that fact." (California Evidence Code Manual, C.E.B. (1966), § 2.37, p. 435.)

Under the presumption of the fairness and regularity of the assessment and in accordance with the rule prevailing at the time of the trial that "a finding of fact may rest upon a disputable presumption although all the other evidence is contradictory." (*Strei v. State Personnel Board, supra,* at p. 650.) The taxpayers did not sustain their burden of showing the board that the assessor's figures were unfair or discriminating. (*Merchants Trust Co. v. Hopkins,* 103 Cal.App. 473, 478 [284 P. 1072]; *Wild Goose Country Club v. County of Butte,* 60 Cal.App. 339, 342 [212 P. 711]. See *Utah Constr. Co. v. Richardson,* 187 Cal. 649, 654 [203 P. 401].) The excluded or rejected evidence would not have changed the result.

The judgment is reversed.

Roth, *P. J.,* and *Fleming, J.,* concurred.

APPENDIX B.

Pertinent Portions of Reporter's Transcript.

That brings us down to the question of the refusal to receive in evidence the State Board's published determination of assessment ratios in Los Angeles County and in other counties for the years 1960 and '61.

I indicated Wednesday in connection with the—you might refer to it as companion cases, the cases involving the 1961 hearing, that I felt that I would have to rule there was no error by the County Board in excluding the State Board's published determination for the year 1960 on the authority of the Web Service case, the holding in that case.

I was unable, frankly, to distinguish anything in the cases disposed of Wednesday, the cases involving the 1961 hearings of the shopping centers, from the opinion in the Web case.

However, I do see a distinction between the 1961 shopping center cases and these 1962 shopping center cases; a difference which also, at least from the face of the opinion in Web, would exist between Web and these 1962 cases, and that is the fact that there was testimony here by the Assessor in effect that he was assessing at the same ratio in 1962 that he had assessed in 1960 and 1961.

And there was further evidence that at least between 1961 and 1962 there had not been a substantial increase in the assessed values in Los Angeles County.

Now, it seems to me that when the Assessor indicates in substance that he has assessed at a ratio in 1962, which is the same as he was assessing in 1960 and

1961, the question or evidence of that ratio in 1960 and '61 becomes material, not merely as a question of impeachment of the testimony of the Assessor that his present ratio is 50 percent, but actually as evidence as to what ratio was employed by the Assessor in 1962.

In other words, I think that this type of evidence obviates the immateriality or irrelevancy of the earlier years ratio that existed in the 1961 cases, as far as I was concerned, in the Web case, where at least one of the bases for refusing to receive that evidence, or on the basis of the objection made by the County Counsel, and one of the bases of the ruling that the District Court of Appeal was that the assessment ratio in one year is irrelevant to the assessment ratio in the next year. And certainly one can understand that if in effect the burden is on the taxpayer to show that the assessment ratios do not differ, which is, I think, the effect of the Web decision.

But if that does place the burden on the taxpayer, I think he meant (sic, met) it in this case.

Now, it leaves a certain difficulty in this case because I am aware that in Web the Court referred both to the irrelevancy in the concept that I have expressed, and to so-called inadequate statistical data, et cetera. And that raises, of course, the question of whether that alleged statistical inadequacy goes to the weight or to the admissibility of the evidence, and who has the burden, say, of establishing statistical adequacy or inadequacy as the case may be.

Now, Mr. Early and the County Counsel have certainly taken the position that the so-called statistical inadequacy—at least they have taken the position in these

shopping center cases—go merely to the weight and not to the admissibility of the evidence, and I think that's apparent from the record here as to his objections.

I think in one case, and I think it is this case, the present case we are dealing with, Mr. Early makes the express statement that, one argument is made by Mr. Ancel, makes the statement that the question of inadequacy goes to weight rather than admissibility.

And certainly Mr. Early arguing that since the change in the date of the equalization hearing of the County Counsel has never objected to the introduction of evidence of the current published ratios as found by the State Board, he indicates in his view that the question of statistical inadequacy goes to weight rather than admissibility because if it goes to admissibility, why, then it doesn't seem to matter whether the date of the hearing has been changed or not.

Yes, Mr. Early?

MR. EARLY: My argument on the transcript there with respect to statistical inadequacy pertained to the current year's ratio.

And your present argument is overlooking the fact that the 1960-1961 assessment ratios were made on a 1959 sample.

It was not only inadequate, but was remote because of the changes in roll since that date.

THE COURT: Well, Mr. Early, as I understand the procedure, it is that the 1958 sampling is taken—that is, the properties appraised are 1958 properties—

MR. EARLY: Yes.

THE COURT: —that the ratio for '58 would be determined by applying the 1958 assessments to those properties;

That in subsequent years the same samples are used, the same appraised figures are used, adjusted through this trending process.

But this trending process affects only the question of value, not of assessment.

And that the assessment ratio is determined by applying the current year's assessment to the trended value figure.

In other words, that even with these 1958 samples you are involved with the 1959-1960, 1960-61, or whatever year is involved—assessments with regard to those sampled properties.

Am I mistaken in that?

MR. EARLY: No, that is right.

There is ambiguity in what you say.

It is not applied to any trended values per sample, but only to a trended value of the entire county's fair market value.

THE COURT: Well, I think the point really is—maybe you will argue the other way, but this is the way I see it at this time is if you have a determination of a ratio existing in a county on a particular date, that that determination can be of no assistance and can be way off if one of two things happen.

One, you have a change in assessments, or two, you have a real change in values.

And, of course, as far as the change of assessments is concerned, this seems to be taken care of in this case, I'd say by the fact that each year they use the current assessment in determining their ratio.

In the present case I'd say there was also evidence given between 1961 certainly and 1962, there was no appreciable—truly appreciable change in assessments.

I think the problem remains, frankly, because—I am not certain of the basis of the decision in the Web case.

I frankly want to give it further consideration, but I did want to point out these observations because I do feel that whereas in the 1961 hearings I felt bound by the ruling in the Web case that it was not error to exclude the 1960 published figures in the '61 hearings.

I felt so bound because there was a ruling of the District Court of Appeal, and I saw no basis for distinguishing the cases.

Here I do see some basis, and I don't think it is an imaginary basis. I think it is a basis that appears to me to be rooted in real logic, going to the very point of relevancy which was at least one of the grounds upon which the Web ruling was made, and certainly was the ground of the objection before by the County Counsel to the receipt of that evidence before the County Board in 1962.

Frankly, I am going to take this case under submission for that reason, because I do want to give further consideration to this matter.

APPENDIX "C."

Opinion of Court of Appeal Relating to Substantial Evidence.

[Civ. No. 32323. Second Dist., Div. Two. Dec. 3, 1968.]

County of Los Angeles, Plaintiff and Respondent, v. Tax Appeals Board No. 2 for the County of Los Angeles, Defendant and Appellant; Simcon Developers, Inc., Real Party in Interest and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Ralph H. Nutter, Judge. Affirmed.

Proceeding in mandamus to compel the Superior Court of Los Angeles County to set aside a decision of the Tax Appeals Board and remand the cause for rehearing and reconsideration. Judgment granting writ affirmed.

Oliver & Stoever and Norman Oliver for Defendant and Appellant.

John D. Maharg, County Counsel, and A. R. Early, Assistant County Counsel, for Plaintiff and Respondent.

Martin Hersh for Real Party in Interest and Respondent.

HERNDON, J.—Tax Appeals Board No. 2 of the County of Los Angeles appeals from the order of the superior court setting aside one of its decisions and remanding the proceeding for rehearing and reconsideration. The challenged order was made following a hearing upon the petition of respondent County of Los Angeles for a writ of mandate filed in accordance with Code of Civil Procedure section 1094.5.

Appellant contends: (1) "The county may not bring an action against a Tax Appeals Board without express statutory authority [and] the Legislature has not granted authority to the county to bring such an action;" and (2) "There was substantial evidence in the whole record to justify the decision of the board." We have concluded that these contentions should be rejected.

Appellant is a Tax Appeals Board of the County of Los Angeles created by Los Angeles County Ordinance 4099 pursuant to the provisions of article XIII, section 9.5 of the California Constitution. On the first Monday in March 1965, Simcon Developers, Inc.[1] was the owner of certain real property located in the County of Los Angeles on which a partially completed building was being constructed.

The Los Angeles County Assessor placed an assessed value on the improvements on the property on the lien date in the amount of $500,000, i.e., 25 percent of fair market value. Simcon filed a petition for equalization which was heard by appellant board. Following the hearing appellant board reduced the assessed value to $250,000. Thereafter, as previously indicated, respondent County filed a petition to review the board's action. The trial court determined that it had jurisdiction to entertain such petition and that the board's action was

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[1]Although listed as an appellant on the briefs filed herein, the record before us fails to disclose that Simcon Developers, Inc., the real party in interest, filed notice of appeal in the superior court. Appellant board, however, is entitled to prosecute this appeal alone. "Under section 938 of the Code of Civil Procedure any party aggrieved may appeal in a proper case. Where the jurisdiction of a tribunal is involved, and the granting of a writ directed to the tribunal would have the effect of controlling or limiting that jurisdiction, the tribunal is an aggrieved party and entitled to appeal. [Citations.]" (*Koehn v. State Board of Equalization*, 50 Cal.2d 432, 435 [326 P.2d 502].)

not supported by substantial evidence. It therefore remanded this proceeding to the board for rehearing and reconsideration.

Appellant's initial contention need not long detain us. Whatever may be the rule in jurisdictions where no express statutory provision has been made for reviewing the orders of administrative agencies, or other bodies exercising quasi-judicial powers, it is clear that such review is provided in California by Code of Civil Procedure section 1094.5.

"Since the enactment of section 1094.5 of the Code of Civil Procedure, it is no longer open to question that in this state the writ of mandamus is appropriate 'for the purpose of inquiring into the validity of any final adminnstrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer . . .'" (*Boren v. State Personnel Board,* 37 Cal.2d 634, 637 [234 P.2d 981].)

"The controlling statute (Code Civ. Proc., § 1094.5) calls for the issuance of a writ to inquire into the validity of 'any final administrative order.' It is now settled that section 1094.5 governs review by mandamus after a formal adjudicatory decision by any administrative agency. (*Temescal Water Co. v. Department of Public Works,* 44 Cal.2d 90, 101 [280 P.2d 1].) As declared in that case: 'The decisive question is whether the agency exercises an adjudicatory function in considering facts presented in an administrative hearing. . . .'" (*Prip v. City of Santa Barbara,* 214 Cal.App.2d 626, 630-631 [29 Cal.Rptr. 558]; also *Allen v. Hum-*

boldt County Board of Supervisors, 220 Cal.App.2d 877, 882 [34 Cal.Rptr. 232]; *People v. County of Tulare,* 45 Cal.2d 317, 319 [289 P.2d 11].)

Appellant, however, does not actually contend that its orders are not (1) final; (2) made as the result of a proceeding in which by law a hearing is required to be given; (3) at which evidence is required to be taken; and (4) in which discretion is vested in it in the determination of facts. Rather it appears to contend either (1) that the county, as "a political subdivision of the state for purposes of government" (13 Cal.Jur.2d, Countries, § 2, p. 348] representing those citizens resident within its boundaries, is not a "party beneficially interested" (Code Civ. Proc., § 1086) in its decisions; or (2) that each of the several Tax Appeals Boards of Los Angeles County, in legal effect, is an agency of the county itself and therefore their various orders may not be challenged by the county for the reason that in making such a challenge the county is seeking to review its own decisions. No legal precedents are cited to support either of these arguments and they appeal to neither logic nor reason.

The county, acting through its statutory officer, the assessor (Gov. Code, § 24000, subd. (j)), was required to (Rev. & Tax. Code, § 1627), and did, "appear" before the board at the hearing sought to be reviewed. It unquestionably is "beneficially interested" in the matter of a loss of $250,000 in assessed valuation from its property tax base. (Cf. *Jefferson Union School Dist. v. City Council,* 129 Cal.App.2d 264, 267 [277 P.2d 104].) [3] "It is clear that where a party has a beneficial interest in the subject matter of the proceedings and a right to appear, and has appeared before the ad-

ministrative agency he properly may institute proceedings for review by mandamus. [Citation.]" (*Employees Service Assn. v. Grady,* 243 Cal.App.2d 817, 826-827 [52 Cal.Rptr. 831]. Cf. also *Tieberg v. Superior Court,* 243 Cal.App.2d 277, 283 [52 Cal.Rptr. 33].)

The contention that each of the several Tax Appeals Boards *is* the county is mistaken. Even prior to the constitutional amendment in 1962 (art. XIII, § 9.5) authorizing the creation of Tax Appeals Boards, it had been long established that "There can be no doubt that the board of equalization and the board of supervisors are two distinct constitutional bodies, although composed of the same members." (*Napa Sav. Bank v. County of Napa,* 17 Cal.App. 545, 548 [120 P. 449], hearing denied.)

Of course, prior to the creation of the Tax Appeals Boards, and the more clearly tripartite nature of their hearings, it never would have been theoretically or pragmatically necessary for the county, acting through its board of supervisors, to challenge the decisions made by its own members when sitting as a board of equalization. Whether the assessor or the district attorney, who, like the members of the board of supervisors, are by statute designated as officers of a county (Gov. Code, § 24000, subds. (a), (j) and (o)), might have sought review of the decisions of the board of equalization with or without authorization by the board of supervisors we need not undertake to determine. (Cf. Gov. Code, §§ 26521 et seq. and Gov. Code, § 25203.) It is sufficient to hold, as we do, that following the establishment of Tax Appeals Boards, sitting as quasi-judicial bodies over disputes between taxpayers and officers of the county may petition for judicial review of their decisions.

On the issue of whether or not there was substantial evidence to support the decision of appellant board, the record is so very brief that it may be quoted in full. The parties agreed that the assessment ratio was 25 percent of fair market value and, apparently, that the established basis for assessing such value in the case of partially completed improvements was the ratio between the total cost thereof and the portion of that total which had been expanded prior to the lien date. Mr. Sid Hersh, who appeared on behalf of the owner, Simcon Developers, Inc., testified: "The figures indicated on the assessment represent approximately $2 million for improvements. . . . I don't know where the Assessor obtained figures which justify an overall expenditure at the lien date of $2 million. My recollection is that it was closer to a million dollars than it was to $2 million. . . . When completed, [the improvements would be worth] somewhere in the neighborhood of between three and a half million to three million seven hundred thousand dollars. We figured it at that time, very, very roughly, and I am sure that it is a rough thing, we figure the building was approximately a third completed."

Respondent properly invokes the applicable presumption that the assessment made by the assessor was regular and correct. (*Best v. County of Los Angeles,* 228 Cal.App.2d 655, 657 [39 Cal.Rptr. 665.) In addition, the assessor's representative in the instant case testified that information received by its cost estimator "from the H. R. Construction Corporation, this is the builder of the property, shows [a] total contract cost, $3,700,000. Cost as of March 1st, 1965, $2,112,390. The company official who relayed this information was not certain at that time whether the cost included the

architect's, the engineer's, and supervision fees." Based on the above total contract cost alone, the building was 57 percent complete on the lien date.

We may assume for present purposes that "very, very rough approximations" constitute evidence sufficient to meet the taxpayers' burden of showing that the assessments were improper. We may further assume that such approximations would permit appellant board, as trier of fact, to accept the lowest such approximation as representing the true market value of the property on the lien date. Nevertheless, there would still be absolutely no evidence in the record upon which to base a finding that the property was worth $1,000,000 on said date.

The sole witness for the owner did not testify to any such figure. He initially stated that according to his "recollection," the amount expended upon the improvements "*was closer* to a million dollars than it was to $2 million." In ordinary parlance such an expression would mean that the speaker felt that the property was worth somewhat less than $1,500,000. Without speculating as to what figures might reasonably be encompassed within this estimate, it is clear that it constitutes an implicit acknowledgment that the property was worth considerably more than $1,000,000.

Thereafter this witness testified that when fully completed, the improvements on the building would be worth "*between* three and a half million to three million seven hundred thousand dollars" and that it was "approximately a third completed" on the lien date. In the context of the present proceeding this statement constituted an express concession that for assessment purposes, the property had a minimum value of $1,166,666.67 on the day in question.

The trial court therefore properly determined that the board's "implied finding that said improvements had a full cash value as of the first Monday in March 1965 of only $1,000,000 is not supported by substantial evidence in the light of the whole record, nor by any evidence at all." The decision of the board being unsupported by substantial or any evidence, the court had no alternative to "remanding the proceedings to [the board] and commanding [it] to set aside its decision to reconsider its action . . . and to conduct a rehearing" therein. A court has no power to conduct a trial de novo and substitute its findings on matters exclusively within the jurisdictions of the appellant board. (*Simms v. County of Los Angeles,* 35 Cal.2d 303, 318 [217 P.2d 936].)

The judgment is affirmed.

Roth, *P. J.,* and Fleming, *J.,* concurred.